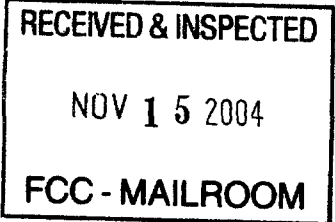


LAW OFFICE OF
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THOMAS E. GLEASON, JR.
MARK DOTY
JOAN P. BOKERMANN

THOMAS E. GLEASON
(1924 - 1992)

DOCKET FILE COPY ORIGINAL

November 12, 2004

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Attn: Marlene H. Dortch

RE: Petition of H & B Cable Service, CC Docket No. 96-45

Dear Ms. Dortch:

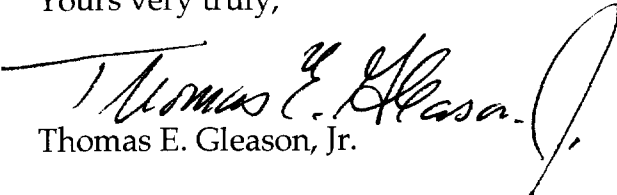
This firm represents H & B Cable Service, Inc. of Holyrood, Kansas. H & B has been designated an Eligible Telecommunications Carrier by the Kansas Corporation Commission in an order including a finding in the public interest that the service area of the United Telephone Company of Eastern Kansas be redefined.

It is our understanding that redefinition as deemed appropriate by the Kansas Corporation Commission requires the agreement of the Federal Communications Commission. To that end we submit herewith the original and two copies of H & B's petition for such agreement, each supplemented by a copy of the KCC order referenced.

We request that the enclosed petition be filed forthwith. If there are any questions or requirements for the consideration of the petition please contact the undersigned at the earliest convenient opportunity.

Thank you for your attention.

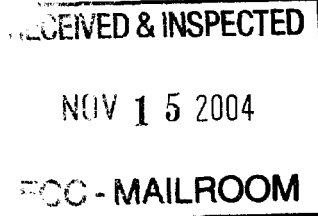
Yours very truly,


Thomas E. Gleason, Jr.

No. of Copies rec'd
List ABOVE

012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**



In the Matter of)
Federal-State Joint Board on Universal Service)
H&B Cable Service, Inc. Petition for Agreement with)
Redefinition of Service Area of United Telephone)
Company of Eastern Kansas in the State of Kansas)
Pursuant to 47 C.F.R. § 54.207(c))

CC Docket No. 96-45

**H&B CABLE SERVICE, INC.
PETITION FOR AGREEMENT WITH REDEFINITION OF SERVICE AREA OF
UNITED TELEPHONE COMPANY OF EASTERN KANSAS**

Thomas E. Gleason, Jr.
GLEASON & DOTY, CHARTERED
POST OFFICE BOX 6
LAWRENCE, KANSAS 66044-0006
TELEPHONE: (785) 842-6800

ATTORNEY FOR H&B CABLE SERVICE, INC.

November 12, 2004

SUMMARY

H&B Cable Service, Inc. ("H&B") hereby seeks the Federal Communications Commission's ("Commission") agreement, pursuant to 47 C.F.R. § 54.207(c), with the redefinition of the service area requirement approved by the Kansas Corporation Commission ("KCC") in connection with its grant of eligible telecommunications carrier ("ETC ") status to H&B.

On October 25, 2004, the KCC granted H&B's application for ETC designation in the Chase and Claflin wire centers for Federal Universal Service Fund (FUSF) and Kansas Universal Service Fund (KUSF) purposes. SBC, a non-rural carrier, is the incumbent local exchange carrier for the Chase wire center. Due to SBC's non-rural status, redefinition for the Chase wire center is not necessary. The Claflin wire center is in the United Telephone Company of Eastern Kansas (UTCEK) study area that is designated as rural. Redefinition of the UTCEK study area is necessary for H&B to receive FUSF and KUSF for Claflin. The KCC has determined that it is in the public interest to redefine the UTCEK study area, including the Claflin wire center. In addition to the KCC approval, 47 C.F.R. 54.207(c) requires agreement with the redefinition by the Commission.

Redefinition of the service area requirement for the Claflin wire center will promote the universal service goals of the Telecommunications Act of 1996. H&B respectfully requests that the Commission approve the redefinition of the service area requirement, pursuant to Section 54.207(c). This will enable H&B to receive FUSF support to facilitate the provision of competitive telephone services and promote further access to advanced services to rural consumers located in Claflin, Kansas.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
H&B Cable Service, Inc. Petition for Agreement with)	CC Docket No. 96-45
Redefinition of Service Area of United Telephone)	
Company of Eastern Kansas in the State of Kansas)	
Pursuant to 47 C.F.R. § 54.207(c))	

H&B CABLE SERVICE, INC.
PETITION FOR AGREEMENT WITH REDEFINITION OF SERVICE AREA OF
UNITED TELEPHONE COMPANY OF EASTERN KANSAS

H&B Cable Service, Inc. ("H&B") respectfully requests the agreement of the Federal Communications Commission ("Commission"), pursuant to 47 C.F.R. § 54.207(c), with the redefinition of the United Telephone Company of Eastern Kansas ("UTCEK") study area approved by Kansas Corporation Commission ("KCC") in connection with its grant of eligible telecommunications carrier ("ETC") status to H&B.¹ A copy of the H&B ETC Order issued by the KCC is included as Attachment 1 to this Petition. The KCC's redefinition of the UTCEK study area is consistent with federal law and the Commission's regulations. The Commission's prompt concurrence will serve the public interest.

¹ *In the Matter of the Application of H&B Cable Service as an Eligible Telecommunications Carrier*, Docket No. 04-HBCT-1107-ETC, (October 25, 2004), ("H&B ETC Order")

I. BACKGROUND

H&B is a facilities-based carrier and will provide customers in Claflin with universal service offerings throughout the designated areas using its own network facilities, and when necessary, resale of ILEC services. On October 25, 2004, the KCC granted H&B's application for ETC designation in the Chase and Claflin wire centers for Federal Universal Service Fund ("FUSF") and Kansas Universal Service Fund ("KUSF") purposes. In the H&B ETC Order the KCC found that H&B has met all of the federal requirements for purposes of being designated an ETC and that such designation was in the public interest.

SBC, a non-rural carrier, is the incumbent local exchange carrier (ILEC) for the Chase wire center. Due to its non-rural status, redefinition for the Chase wire center is not necessary and therefore the H&B ETC Order authorizes H&B to receive FUSF and KUSF support for serving the Chase wire center area.

The Claflin wire center is in the United Telephone Company of Eastern Kansas ("UTCEK") study area that is designated as rural. For rural carriers the service area is defined as the ILEC's study area.² However, Section 54.207(b) of the Commission's rules permits a state commission to designate ETCs for a service area that differs from a rural ILEC's study area. The KCC has determined that it is in the public interest to redefine the UTCEK study area, including the Claflin wire center. The initial determination of the UTCEK study area redefinition was made in the KCC's September

² See Section 214(e)(5) of the Federal Act and 47 C.F.R. §54.207(b)

30, 2004 Order in Docket No. 04-RCCT-338-ETC (RCCT Order).³ The KCC took notice of the RCCT Order when it approved H&B's ETC application.

If the state commission designates service areas that differ from the study area definition, Section 54.207(c) provides that such designations will take effect subject to agreement by the Commission. Specifically, Section 54.207(c) requires the following:

“If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

(1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.”

The study area redefinition has been provided in this petition. The relevant Orders of the KCC are included in Attachment 1 and Attachment 2.

As required in Section 54.207(c) in making and agreeing to such designations, the Commission and the state commission each must give full consideration to the Joint Board's recommendations and explain their rationale for redefining the service or study

³ *In the Matter of Petition of RCC Minnesota, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Docket No. 04-RCCT-338-ETC, (September 30, 2004). This Order also required RCC Minnesota, Inc. (RCC) to obtain FCC concurrence for redefinition rural carrier study areas, including the Claflin wire center. As of the date of the filing of this Petition, H&B is not aware that RCC has filed for Commission concurrence of the rural study areas outlined in the KCC's Order.

area. The Joint Board has recommended three items for consideration by the Commission when evaluating redefinition of study areas: “(1) Minimizing cream skimming; (2) Recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) Recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.”⁴ H&B Cable provides further information below regarding the manner in which the redefinition takes into account the criteria established by the Joint Board.

II. THE STUDY AREA REDEFINITION FOR UTCEK MEETS THE CRITERIA ESTABLISHED BY THE JOINT BOARD

With regard to the evaluation of the Joint Board criterion concerning minimizing “cream skimming,” the KCC in evaluation of the study area redefinition performed a population density analysis that was introduced in the Virginia Cellular Order. The “cream skimming” opportunity is presented when an ETC elects to only serve the low cost wire centers in an ILEC’s study area and avoids serving the high cost areas. Since, generally, FUSF support is averaged across the entire study area, an ETC by serving the lower-cost wire centers could get support that is higher than the incumbent’s actual costs for serving these areas. In the Virginia Cellular Order, the Commission used population density as a proxy for determining high and low cost areas. Typically, wire center areas with low population densities are high-cost service areas and wire centers with high

⁴ *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd, Para. 41 (2004)(“*Virginia Cellular*”)

population densities are low-cost service areas. Thus, if an ETC focused on serving only the wire center areas with high or above average population densities, a cream skimming opportunity might exist. In the KCC Staff evaluation, the data showed that the population density for the Claflin wire center was very close to the average population density for all wire centers located in the UTCEK study areas.⁵ Thus, there is little if any opportunity for “cream skimming,” by redefining the UTCEK study area for the Claflin wire center.

The UTCEK is a study area that is owned and operated by Sprint. While the UTCEK study area qualifies for rural designation pursuant to the Act and FCC Rules, Sprint is a much larger company than typical rural LECs. Thus, the Joint Board consideration recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs is not as significant as it would be for redefinition of study areas for smaller rural LECs. Further, the KCC in its evaluation of the study area redefinition concluded that redefinition of the UTCEK study area was in the public interest.

There are no administrative burdens imposed by redefining the UTCEK study area. As the FCC has previously recognized, redefinition of service or study areas by wire centers does not require that rural telephone companies determine their cost on a basis other than the study area level.⁶ Rural telephone companies may continue to calculate costs on a study area basis. The rural LEC is free to decide whether it is in its

⁵ *In the Matter of the Application of H&B Cable Service as an Eligible Telecommunications Carrier*, Docket No. 04-HBCT-1107-ETC, Supplemental Testimony Prepared By Christine Aarnes On Behalf Of Kansas Corporation Commission Staff, Page 5, March 23, 2004.

⁶ See *In the Matter of Federal State Joint Board on Universal Service: RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its licensed Service Area In the State of Alabama*, Released: November 27, 2002, Para. 41.

best interest to calculate costs in a manner other than a study area basis. Moreover, since the ILEC operating in Claflin is owned by Sprint, a large company with significant resources, any impacts on the administration of costs are of less concern than they would be for a much smaller ILEC.

III. CONCLUSION AND REQUEST FOR COMMISSION APPROVAL OF THE STUDY AREA REDEFINITION

In accordance with the Section 54.207(c), this Petition provides the study area redefinition and the relevant orders of the KCC concerning this definition as well as analyses that take into account the recommendations of the Joint Board. This information substantiates that redefinition of the UTCEK study area, including the Claflin wire center, is in the public interest. The study area redefinition will enable H&B to provide universal service offerings thereby allowing competitive choices to rural customers located in Claflin, Kansas. Additionally, approval of the study area redefinition will facilitate the further availability of advanced services to customers located in Claflin. H&B Cable respectfully requests that the Commission approve the UTCEK study area redefinition.

Respectfully Submitted,

H&B Cable Systems, Inc.

By: 

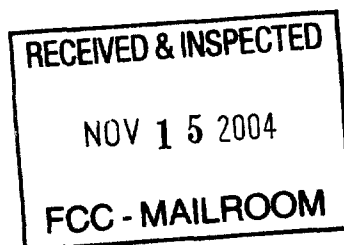
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ATTACHMENT 1

2004.10.25 09:54:23
Kansas Corporation Commission
Susan K. Duffy

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet



In the Matter of the Application of H&B)
Cable Service, Inc. for Designation as an) Docket No. 04-HBCT-1107-ETC
Eligible Telecommunications Carrier.)

**ORDER DESIGNATING H&B CABLE SERVICE
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

NOW, the above-captioned matter comes on before The State Corporation Commission of the State of Kansas (Commission) for consideration and decision. After examining its files and records, and being duly advised in the premises, the Commission finds and concludes as follows.

1. On June 15, 2004, H&B Cable Service, Inc. (H&B) filed its application requesting designation as an eligible telecommunications carrier (ETC) in the Chase and Claflin wire centers for the purpose of receiving both Federal and Kansas Universal Service support.

2. H&B is a telecommunications provider incorporated under the laws of the State of Kansas and certified by the Commission on February 25, 2004, in Docket No. 04-HBCT-623-COC, to provide switched local exchange telecommunications service and exchange access service throughout the service areas of SWBT and Sprint/United Telephone Company (Sprint/United). H&B is a wholly owned subsidiary of H&B Communications, Inc., a rural independent local exchange company. H&B is properly registered with the Office of the Kansas Secretary of State, with a current status of "active and in good standing."

3. Southwestern Bell Telephone, L.P. (SWBT) is the incumbent local exchange carrier (ILEC) serving the Chase exchange. SWBT is considered a non-rural telephone company for both federal and state purposes. Sprint/United is the ILEC serving the Claflin exchange. Sprint/United is considered a rural telephone company for federal purposes and a non-rural telephone company for state purposes. Sprint/United has three study areas for federal purposes—Eastern, Southeast and United. Claflin is in the Eastern study area.

4. SWBT filed its petition to intervene on June 23, 2004, which the Commission granted on August 27, 2004.

5. On October 13, 2004, Commission Staff (Staff) submitted its Report and Recommendation, recommending approval of H&B's application.

Federal ETC Requirements

6. The Federal Communications Act of 1996 (FTA), at 47 U.S.C. § 214(e)(2), sets out the requirements that a requesting carrier must meet in order to be designated as an additional ETC by a state commission:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1).

Paragraph (1) of § 214(e) permits an ETC to receive universal service support if, throughout the service area for which the designation is received, it (A) offers the services supported by the Federal Universal Service Fund (FUSF) using its own facilities or a combination of its own facilities and resale of another carrier's services and (B) advertises the availability of the supported services and charges therefor using media of general distribution.

Service areas

7. "Service area" is defined in § 214(e)(5) as:

. . .a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

As defined by the State of Kansas in K.S.A. 66-1,187, the operating or service area of a rural telephone company is its study area or areas as approved by the FCC. For a non-rural local exchange carrier, its operating or service area is its local exchange service area or areas as approved by the Commission.

8. SWBT is a non-rural ILEC for both federal and state purposes. The Commission has designated SWBT wire centers as its service areas for universal service support purposes. Thus, H&B must offer service throughout the entire Chase wire center to qualify for federal and state universal service support.

9. Sprint/United, on the other hand, is considered a rural telephone company for federal support purposes. H&B, therefore, must offer its services throughout the entire Sprint/United-Eastern study area, unless the Commission and the FCC approve a different service area, as requested by H&B. In its September 30, 2004 Order in Docket No. 04-RCCT-338-ETC (RCCT Order), the Commission determined that it was in the public interest to redefine the Sprint/United-Eastern study area to the wire-center level, including the Claflin wire center. However, the FCC must concur with this determination.

10. The Commission concludes that it may designate H&B as an additional ETC in the Chase wire center for FUSF purposes. With regard to the Claflin wire center in Sprint/United-

Eastern study area, the Commission takes administrative notice of its RCCT Order and concludes that, if the FCC agrees with the Commission's redefinition of Sprint/United-Eastern study area to the wire center as determined in the RCCT Order, H&B may serve the Claflin wire center as an additional ETC, provided H&B meets all other criteria for ETC designation.

Type of facilities used to provide service

11. In its application, H&B Cable advised the Commission that it would provide customers with universal service offerings throughout the designated areas using its own network facilities and, when necessary, by resale of ILEC services. On October 6, 2004, H&B added fixed wireless to the facilities by which it would provide universal service offerings. According to H&B, it will serve the majority of customers through the use of its own wireline facilities generally within the city limits of Chase and Claflin. For customers who reside beyond city limits, H&B plans to deploy fixed wireless facilities to provide service. Where use of wireless facilities may not be practical, H&B will provide service through resale of the ILEC's services.

12. The fixed wireless service will utilize the 700 MHz licensed spectrum. H&B currently holds the 700 MHz license in Barton County (Claflin) and is negotiating to obtain the license in Rice County (Chase). The system will utilize the same switch that will be employed for the provision of wireline services. As such, the components of universal service specified in 47 C.F.R. § 54.101 will be satisfied by the wireless platform in the same manner as described in H&B application. These universal service components, as well as additional features and vertical services, will be provided to all customers regardless of technology used to provide the local loop.

13. An Interconnection and Master Resale Agreement between H&B and Sprint/United was approved by the Commission in Docket No. 05-UTDT-019-IAT on July 27, 2004. H&B

Cable has assured Staff that it had negotiated an Interconnection and Resale agreement with SWBT and is in the process of obtaining final signatures. These interconnection agreements will enable H&B to utilize the resale option where it has not yet deployed its own facilities.

14. The Commission finds that H&B will provide its universal service offerings using its own facilities or a combination of its own facilities and resale of another carrier's services. The Commission, therefore, concludes that H&B has complied with the FTA's § 214(e)(1)(A) provisions.

Advertising

15. As noted above, H&B must advertise the availability of its universal service offerings, and the charges therefor, throughout the designated areas using media of general distribution.. H&B has assured Staff that it will advertise its universal service offerings using media of general distribution in the areas for which it seeks ETC designation. The media may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts and telephone directory advertising. H&B has stated it will comply with all form and content requirements, if any, promulgated by the FCC and/or by this Commission. Staff is satisfied that H&B will meet the 214(e)(1) requirements for advertising its universal service offerings.

16. In its Order of September 24, 2004, in Docket No. 04-ALKT-283-ETC (ALLTEL Order), the Commission required ALLTEL Kansas Limited Partnership (ALLTEL) to work with Staff in developing language in ALLTEL's advertising to include, among other things, directing customers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding any service issues. In the RCCT Order, the Commission also directed RCC Minnesota, Inc. (RCC) to work with Staff to develop the same sort of language for RCC's advertising. Staff cautioned H&B that, if the Commission designates H&B as an additional

ETC, it may direct H&B to develop similar language for its advertisements of H&B's universal service offerings. Staff also advised H&B that the Commission had opened a generic ETC docket and that it would be obligated to comply with any additional requirements that the Commission may impose on ETCs in that docket.

17. The Commission finds that H&B will advertise its universal services, and the charges therefor, throughout the designated areas using media of general distribution. The Commission concludes that, as such, H&B satisfies the FTA's § 214(e)(1)(B) provisions for FUSF purposes. The Commission further finds that, if additional ETC obligations are developed in the ETC generic docket, H&B will be subject to those additional obligations. The Commission finds that H&B must work with Staff in developing language in its advertising to include, among other things, directing customers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding any service issues. H&B and Staff must file a joint report of their progress in this regard within 90 days of the effective date of this Order.

Public interest

18. In Docket No. 99-GCCZ-156-ETC, the Commission determined that it is a rebuttable presumption that it is in the public interest to designate additional ETCs in areas served by rural telephone companies:

The Commission must be guided by K.S.A. 1999 Supp. 66-2001 when making determinations that affect telecommunications customers in Kansas. The clear and unmistakable public policy imperative from both the federal and state legislatures is that competition is a goal, even in rural areas. Arguments have been made that competition is not in the public interest in any rural telephone company service area because it may jeopardize universal service. However, there has been no basis presented for reaching the broad conclusion that competition and universal service are never able to exist together in rural areas. The Commission does not accept the assertion that designating additional ETC in rural areas will necessarily threaten universal service. The benefits of competition and customer choice are available to

Kansans living in non-rural areas. General concerns and speculation are not sufficient justification for adopting a policy that would result in benefits and services that are available to other Kansans not also being available to rural telephone customers. The Commission finds, as a general principle, that allowing additional ETCs to be designated in rural telephone company service areas is in the public interest.

This general public interest finding is a presumption which may be rebutted by individual rural telephone companies. The Commission has the discretion to find that in a particular discrete rural area, competition is not in the public interest. The obligation to establish that additional ETCs are not in the public interest is on the rural telephone company serving that area. Such a determination must be based on the facts shown to exist in a specific study area.

In addition to the competitive aspect, the FCC has adopted several other considerations in evaluating public interest findings in its Memorandum Opinion and Order in CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia (Virginia Cellular)*. Although *Virginia Cellular* is not binding on this Commission, it did find in the ALLTEL and RCCT Orders that examination of the additional factors in *Virginia Cellular* was reasonable. In its application, H&B Cable provided explanation of how it meets the additional factors set out in *Virginia Cellular*:

- Benefits of Increased Competitive Choice—The primary benefit to the majority of customers is the choice in technology and service options. Customers will be able to choose services based on pricing, service quality, customer service and service availability.

- Impact on Universal Service Fund—The Claflin exchange serves only about 600 customers. Even if H&B Cable served the entire customer base in Claflin, the impact on the FUSF and the KUSF would be minimal.¹

¹ In response to Staff RFI 1.2, H&B Cable estimated that, if it would serve the entire Claflin customer base, it would annually draw approximately \$67,450 from the FUSF and \$194,000 from the KUSF. With respect to the Chase exchange, SWBT obtains minimal support from the FUSF. Because H&B Cable is eligible only for the same per-line support that SWBT receives, it would qualify only for the same minimal FUSF support amount. On the other hand, if H&B Cable would serve the entire Chase customer base, it would be eligible for \$172,000 KUSF support annually.

- Unique advantages and disadvantages—H&B Cable maintains that it will offer new choices of basic and advanced service options and technologies to Claflin and Chase customers. There does not appear to be any significant disadvantages to H&B Cable's services.

- Quality of Service—Although the CTIA customer code was fashioned for mobile wireless service providers, H&B has committed to comply with the customer code and committed to report the number of consumer complaints per 1000 telephone numbers to the Commission each year. H&B Cable also assured the Commission that it would abide by any quality of service standards imposed by the FCC or this Commission.

- Service in Designated Area—H&B Cable has committed to provide its services to any customer within the Claflin and Chase exchanges within a reasonable time after request by means of its own facilities. In those rare exceptions where resale of incumbent's services is necessary, there would be no adverse effect on the quality of service.

19. Prior to *Virginia Cellular*, a public interest finding was not necessary in non-rural service areas. However, in its ALLTEL Order, the Commission recognized that the FCC had determined that "designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based . . . merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will not necessarily be consistent with the public interest in every instance." *Virginia Cellular* ¶ 27. However, the FCC did indicate that, if a requesting carrier could demonstrate it was in the public interest to be designated an ETC in rural service areas, it would meet the public interest requirements for non-rural service areas. *Id.*

20. Staff believes that H&B has demonstrated that it is in the public interest for the Commission to designate H&B as an additional ETC in the Chase and Claflin wire centers for FUSF purposes.

21. The Commission agrees with Staff and concludes that it is in the public interest to designate H&B as an additional ETC in the Claflin wire center for FUSF purposes, subject to the FCC's agreement with the redefinition of Sprint/United-Eastern study area to the wire center.

Because the Commission concludes that H&B has met the more rigorous public interest analysis for the rural Claflin wire center, the Commission further concludes that H&B has met the public interest consideration for the non-rural Chase wire center.

Kansas ETC Requirements

22. K.S.A. 66-2008(c) adopts the federal standards contained in 214(e)(1) for the designation of a requesting carrier as an additional ETC for KUSF purposes:

Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified communications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

To date, the Commission has not established additional state-specific criteria for ETC designation.

23. SWBT and Sprint/United Telephone are both non-rural telephone companies for state purposes. Because the study area for Kansas non-rural ILECs is the wire center, there is no need to redefine the study area for either SWBT or Sprint/United-Eastern. H&B must provide its universal service offerings, and advertise their availability and charges, using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the Chase and Claflin wire centers to qualify for ETC designation for KUSF purposes.

24. Staff believes that H&B Cable has demonstrated that it will serve throughout the designated areas in accordance with the law and that it is in the public interest to designate H&B as an additional ETC for the Chase and Claflin wire centers for KUSF purposes.

24. The Commission agrees with Staff and concludes that it is in the public interest to designate H&B as an additional ETC in the Chase and Claflin wire centers.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission hereby designates H&B Cable Service, Inc. as an additional ETC in the Chase and Claflin wire centers for FUSF and KUSF purposes. However, H&B Cable Service, Inc. may not receive any federal universal support in the Claflin wire center until the FCC agrees with the redefinition of Sprint/United-Eastern study area to the wire center.

B. H&B Cable Service, Inc. must work with Commission Staff to develop language for its advertising consistent with the Orders in Docket Nos. 04-RCCT-338-ETC and 04-ALKT-283-ETC. Staff and H&B must file a joint report with regard to their progress within 90 days of the effective date of this Order.

C. H&B Cable Service, Inc. will be subject to any additional obligations that the Commission imposes upon ETCs in Docket No. 05-GIMT-112-GIT, or in any subsequent docket.

D. The parties have 15 days from the service of this Order in which to petition the Commission for reconsideration of any final issue or issues decided herein. If this Order is mailed, service is complete upon mailing and the parties may add three days to the fifteen-day time frame. All petitions for reconsideration must be served on the Commission's Executive Director.

E. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

ORDER MAILED

BY THE COMMISSION IT IS SO ORDERED.

Dated: **OCT 25 2004**

OCT 25 2004

 Executive
Director

Susan K. Duffy
Executive Director

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